

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

Methodology for Determining Federal Fiscal Year 2010 (49 CFR Part 26 Section 26.45) DBE GOAL

Introduction

The South Carolina Department of Transportation, hereinafter referred to as SCDOT, has prepared this document to describe the methodology used to establish the overall Disadvantaged Business Enterprises (DBE) goal mandated by 49 CFR Part 26 for its federally assisted highway contracts. When establishing this goal, SCDOT relied upon and adhered to guidance provided in the regulations.

49 CFR §26.45 requires a two-step process for setting the overall DBE goal, which should reflect the expected level of DBE participation on SCDOT contracts in absence of discrimination.

SCDOT proposes to establish its Disadvantaged Business Enterprises (“DBE”) overall goal for federal fiscal year 2010 (“FFY 10”) at 11% for new contracts, with 3.5% to be obtained through race-neutral means and the remaining 7.5% through race-conscious means.

Annual Goal Methodology Process (Two-Step Process)

Step One: Determining the Base Figure – 49 CFR §26.45(c)

As part of the goals setting process, Step 1 requires SCDOT to begin with a base figure for the relative availability of DBEs. The Base Figure represents the number and relative availability of ready, willing and able DBE firms as compared to all firms ready, willing and able to perform work for SCDOT. This formula utilized to calculate this percentage is listed below:

$$\frac{\text{Ready, Willing \& Able DBEs}}{\text{All Firms Ready, Willing \& Able}} \quad (\text{Including DBEs and non-DBEs})$$

As allowed by 49 CFR 26.45(c) (2), SCDOT used its Bidders List to determine the Base Figure. The Bidders List consists of all contractors who bid or quoted on SCDOT preconstruction or construction contracts in the past year. Below, Table 1 summarizes the data gathered from SCDOT’s Bidders List.

Table 1 – Relative Availability of DBEs

FIRMS	Preconstruction	Construction	BOTH
DBE Firms	42	136	178
All Firms	197	824	1021
% DBE firms to all firms	21%	17%	17%

Approximately 10% of SCDOT's contract dollars are expended on preconstruction contracts and 90% are expended on construction contracts. Therefore, the above relative availability figures for preconstruction and construction are being weighted accordingly:

$$[\text{Preconstruction (10\%)} (21\%) + \text{Construction (90\%)} (17\%) = \text{Overall 17\%}]$$

Based on this, SCDOT has determined its **Base Figure** (relative availability of DBEs) to be **17%**.

Step Two: Adjust the Base Figure – 49 CFR 26.45(d)

Regulations require SCDOT to consider all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal.

A. DBEs' Capacity to Perform Work – 49 CFR §26.45(d) (1) (i)

1. Past performance. SCDOT considered the capacity of DBEs to perform work based upon past performance, as measured by the volume of work DBEs have performed in recent years. Table 2 below contains a summary of the expenditures to DBEs on closed projects for the last two completed fiscal years and six months of the current fiscal year.

Table 2 – Expenditures to DBEs on Closed Projects

FFY	Total Expenditures	Expenditures to DBEs	DBE %
2007	\$ 292M	\$28M	9.7%
2008	\$ 678M	\$86M	12.7%
* 2009	\$ 458M	\$63M	13.8%
Totals	\$1,428M	\$177M	12.4%

*The 2009 figures are through March 31, 2009 only.

Source: FHWA Uniform Reports of DBE Awards and Payments

Based upon the above information, which reflects the total expenditures (\$1428M) for the last 2 ½ years, DBEs have received \$177M or 12.4% of the total expenditures.

2. Other indicators of DBE capacity. In FFY09, SCDOT received a total of 103 bids on twenty (20) state-funded set-aside projects with a total of twenty-three (23) DBEs competing. In FFY08, SCDOT received a total of forty-four (44) bids on eleven (11) state-funded set-aside projects with eleven (11) DBEs competing. In FFY07, SCDOT received nine (9) bids on the four (4) set-aside projects with seven (7) DBEs competing. A review of the FY09 figures indicates a significant increased interest and participation by DBEs in the state-funded set-aside program.

B. Disparity Studies – 49 CFR §26.45(d) (1) (ii)

The department explored the feasibility of conducting an updated disparity study to determine the availability of and utilization of disadvantaged business enterprises. Due to economic constraints, a determination was made to recommend the funding of a DBE availability/underutilization study, with a research period of eighteen (18) months. The recommendation was made to the department's Research and Development Executive Committee (RDEC), which consists of various representatives to include the SCDOT, FHWA, colleges and universities. Funding has not been approved at this time. Based on this determination, the disparity study was unavailable for consideration.

C. Evidence from Related Fields – 49 CFR §26.45(d) (2)

The regulations also allow an adjustment of the Base Figure based upon consideration of evidence from related fields that show how opportunities for DBEs to form, grow and compete have impacted their numbers in the SCDOT market area. SCDOT is not aware of any evidence of this kind that could be used to adjust the Base Figure. Therefore, SCDOT made no adjustment to the Base Figure based on this type of evidence.

D. Opportunities for DBE Participation in the Federal-Aid FFY10 Program

In adjusting the Base Figure, SCDOT considered the forecasted opportunities that DBEs have to participate in new contracts in the SCDOT's FFY10 federal-aid contracting program.

There will be approximately \$460M in federal funds available to SCDOT in FFY10 for new contracts. The FFY10 federal-aid contracting program is expected to consist of the following projects- bridge replacement, interstate maintenance, system preservation and upgrades, safety and CMAQ projects.

Additionally, it is estimated that approximately \$213M in ARRA dollars will be utilized in FFY 10 for new contracts. ARRA projects are expected to consist of Bridge replacement, interstate maintenance system preservation and upgrades, safety and enhancements. It should be noted that additional projects may be added or deleted depending on project designation.

A review of the SCDOT DBE Directory establishes the fact that there are certified DBE firms available to perform the types of work items included in the projects expected to be let. If DBEs, who are certified to perform this type of work, are awarded all of the available work, the projects can provide a maximum of approximately 9% or \$41.4M in DBE participation on federal aid assisted projects for FFY10. In addition to this, ARRA projects can provide approximately 11% or \$22.7M in DBE participation. (See information contained in Table 3 on page 4.)

Table 3 – DBE Contracting Opportunities in FFY10 Federal-Aid Program
(Federal dollars only)

Project Type	Federal Aid Total \$	DBE %	DBE \$	ARRA Total \$	DBE %	DBE \$
Bridges	\$134M	10.0%	\$13.4M	\$ 27M	10.0%	\$ 2.7M
Interstate Maintenance	\$121M	10.0%	\$12.1M	\$ 14M	10.0%	\$ 1.4M
Pavement & Resurfacing	\$118M	6.0%	\$ 7.1M	\$ 34M	6.0%	\$ 2.0M
System Upgrades (MPO/COG)	\$ 50M	11.5%	\$ 5.8M	\$128M	11.5%	\$14.7M
Safety	\$ 35M	8.0%	\$ 2.8M	\$ 5M	8.0%	\$.4M
CMAQ	\$ 2M				8.0%	\$.2M
Enhancements	N/A	N/A	N/A	\$ 5M	30.0%	\$ 1.5M
TOTALS	\$460M	9.0%	\$41.4	\$213M	11%	\$22.7M

Source: SCDOT Finance, Planning and Engineering

E. Impact of new State contracting opportunities for DBEs in FFY10

SCDOT also considered the impact that new State funded contract opportunities in FFY10 could have on DBE capacity. Total expected new FFY10 state funded contracting opportunities for DBEs is estimated to be \$18.5M. (See Table 4 below.) If you add the anticipated state funded amount (\$18.5M) to the anticipated federal opportunities (\$64.1), there would be approximately \$82.6M in new DBE opportunities in the upcoming fiscal year. In reviewing expenditures on closed projects for the past year through March 31, 2009, DBEs as a group performed approximately \$149M (2008- \$86M & January 09-March 09- \$63M) in federal work; therefore, SCDOT feels the anticipated amount of state work should not diminish DBE capacity.

Table 4 – DBE Contracting Opportunities FFY10 State Funded Contracts
(State Dollars Only)

<u>Project Type</u>	<u>Total \$</u>	<u>DBE \$</u>	<u>DBE%</u>
"C" Fund	\$ 39 M	\$ 3.1 M	8%
Maintenance Resurfacing	\$124 M	\$ 11.2 M	9%
Guardrail	\$ 4 M	.4 M	10%
Pavement Marking	\$ 17 M	\$ -	0%
Concrete	\$ 4.7M	\$ 3.76M	80%
Totals	\$188.7 M	\$ 18.5 M	9.8%

Source: SCDOT Finance, Planning and Engineering

F. Final Adjustment of Base Figure - 49 CFR 26.45 (d)

The Base Figure was calculated at 17%, based solely upon the number of ready, willing and able DBEs. The Base Figure does not take into consideration the capacity of the firms or the type of work they perform. The Base Figure must be adjusted based on evidence of past performance and capacity of the DBEs, the new projects that will be available in FFY10, and the types of work DBEs are certified to perform.

The past performance and capacity of DBEs based upon expenditures over the last two and a half federal fiscal years is approximately 12.4% of total federal dollars expended. (Refer back to Table 2, Page 2) Considering the work areas DBEs are certified to perform and the type of work that will be available on FFY10 projects, new contract opportunities for DBEs in FFY10 could provide as much as \$41.4M, or 9% of federal dollars and \$22.7M or 11% (Refer to Page 4, Table 3) The average of DBE past performance and anticipated DBE new contracts opportunities is 11%.

In adjusting the Base Figure, SCDOT took into consideration the possible impact of its outreach efforts to grow new DBE firms in FFY10. These efforts will include training sessions, to include the Entrepreneurial Development Institute (EDI) sponsored by SCDOT, Business Development Academy (BDA), Mentor-Protégé Program (MPP), procurement/outreach fairs and supportive services assistance provided to DBEs by SCDOT staff. Although contracting opportunities may be limited to an average of 10% of the federal program based on the items of work DBEs are currently certified to do, outreach efforts should encourage the growth of new DBE firms and the expansion of DBE firms into new areas of work. SCDOT anticipates its increased efforts will encourage additional DBE participation. SCDOT is also encouraged by the increased interest that DBEs have shown in the state set-aside program, which definitively indicates a strengthening of the DBE capacity.

Taking all these factors into consideration, SCDOT determined that it was reasonable to adjust the Base Figure to 11%.

Adjusted Base Figure = 11%

III. Step Three: Express overall goal as a percentage of Federal funds – 49 CFR §26.45(e) (1)

Based upon the above methodology, SCDOT set its FFY10 Overall DBE Goal at 11%.

Step Four: Race Conscious versus Race Neutral Methods – 49 CFR §26.45(f) (3)

The regulations require SCDOT to determine how much of its FFY10 DBE goal it expects to meet through race-conscious methods and how much through race-neutral methods. Last year (FFY09), SCDOT projected that of its overall goal of 10.7%, it would meet 3.2% through race-neutral methods and 7.5% through race-conscious methods.

SCDOT examined its track record on DBE participation for projects closed out in the past two full fiscal years and the first six months of FFY09, looking specifically at the break down between race-neutral and race conscious-participation. SCDOT measures race-conscious participation by counting payments made to DBEs to fulfill contract goals. SCDOT measures race-neutral participation by counting payments made to DBEs in excess of contract goals or payments made to DBEs on contracts where no DBE goal has been set. The amount of race-conscious or race-neutral participation can only be determined after

projects are closed out and all payments have been verified. These expenditures are summarized in Table 5 on page 6.

**Table 5 – Expenditures to DBEs with Race Neutral/Race Conscious Breakdown¹
(Completed Projects Only)**

2007 Goal = 10.5% (Race-neutral Goal = 3.0% Race-conscious Goal = 7.5%)
2008 Goal = 10.7 % (Race-neutral Goal = 3.2% Race-conscious Goal = 7.5%)

FFY	Total Expenditures	Expenditures to DBEs	DBE	R/N% ²	R/C% ³
2007	\$ 292M	\$ 28M	9.7%	1.3%	8.4%
2008	\$ 678M	\$ 86M	12.7%	3.1%	9.6%
2009*	\$ 458M	\$ 63M	13.8%	5.7%	8.1%

*These figures are through March 31, 2009 only.

Source: FHWA Uniform Reports of DBE Awards and Payments

1- Table 5 is based upon projects closed out in the indicated FFY. Data reflected in FFY09 includes only the first six months of FFY09.

2- Race-neutral participation Rate – includes either DBE expenditures above the contract goal or DBE expenditures on contracts with no goals.

3- Race conscious participation rate – includes DBE expenditures to meet contract goal.

Race-neutral participation -SCDOT achieved 1.3% of its race-neutral goal in FFY07. In FFY08, the department achieved 3.1% race neutral participation, exceeding the goal by .1%. However, in the first six months of FFY09, SCDOT achieved 5.7% in race-neutral participation exceeding the goal of 3.2%. Race-neutral participation has continued to increase each year and reflects a significant increase in FFY09. SCDOT has already surpassed its goal of 3.2% race-neutral participation for the FFY09 fiscal year. In keeping with the mandate to meet the maximum feasible portion of the overall goal by race-neutral means, SCDOT proposes to establish its FFY10 race-neutral goal at 3.5%.

Race-conscious participation - SCDOT exceeded its FFY07 race-conscious (“contract”) goal of 7.5% by .9%. The FFY08 goal of 7.5% was exceeded by 2.1% totaling 9.6%. However, in the first six (6) months of FFY09, the department exceeded its goal of 7.5% by only .6%. In view of this, SCDOT has elected to keep its race-conscious goal for FFY10 at 7.5%.

Overall goal - Based on the above analysis, SCDOT proposes to establish its FFY10 DBE goals as follows:

Overall DBE Goal	11.0%
Race-conscious Goal	7.5%
Race-neutral Goal	3.5%

Public Participation – 49 CFR §26.45(g) (1)

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

In an effort to satisfy the requirement of public participation, SCDOT held public consultation meetings April 21, 2009 in Columbia South Carolina; April 22, 2009 in Greenville, South Carolina and April 28, 2009 in Charleston South Carolina. Approximately seven hundred and twenty (720) invitations were extended. The invitee list included all firms listed on the South Carolina UCP Directory, Pre-qualified contractors and consultants lists at the time of the mailing. Additionally, UCP partners, along with Metropolitan Planning Organizations (MPOs), Council of Governments (COGs) and transit providers were invited. Various minority and women's organizations, other partners, members of the SC Black Caucus and local Federal Highway Administration representatives were invited to attend. A collective total of sixty-nine (69) invitees (60 DBE firms/other organizations) were in attendance.

SCDOT opted to utilize a "World Café" approach, which allowed for different individuals to sit at several tables in small conversation clusters to explore questions or issues that matter as it relates to doing business with SCDOT. Each table was headed by an employee of the Office of Business Development and Special Programs who served as the facilitator responsible for asking the questions designated for their respective table. Prior to the group sessions commencing, participants were encouraged to jot down ideas on the comment cards provided and an attendee was designated to place group information on a flip chart. Time was called at the beginning of each session and at the end of each session. When time was called, participants immediately moved to the next designated table to discuss new topics. Participants were allowed 5 minutes to rotate to the next table and were notified when to begin the next session. This process continued to a third table, which was the final rotation. At the end of the final session, time was called and the consultation meeting ended with a wrap up, which included a brief summary of common interests/concerns and closing remarks. SCDOT considered the input from these groups in setting the proposed goal as required by 49 CFR §26.45(g) (1).

Additionally, SCDOT will publish the attached Notice of Proposed FFY10 DBE Goal soliciting comments from the public in following local newspapers: Millennium Magazine, Black News, The Community Times, all minority focused publications; The Greenville News; The Charleston Post and Courier; The State (Columbia, SC); The Sun News (Myrtle Beach, SC); and South Carolina Business Opportunities (State Procurement publication). SCDOT will also publish the Notice and a copy of the Goal Statement and Methodology and solicit input from the public on SCDOT's website at <http://www.scdot.org/doing/dbe.shtml>.

The Goal Statement and Methodology will be available for inspection for a period of 30 days from the date of the notice, during the hours of 8:30 a.m. and 5:00 p.m. at SCDOT Headquarters, 955 Park Street, Columbia, SC, in the Business Development Center, Room 213 and on SCDOT's web site at <http://www.scdot.org/doing/dbe.shtml>. SCDOT will accept

written comments on the goals for 45 days from the date of the notice. Written comments must be sent to: Ms. Paula Hollis, SCDOT, P.O. Box 191, Columbia, SC 29202.

SCDOT will also send letters to persons who would be expected to be interested in the DBE program enclosing copies of the proposed Goal Statement and Methodology and soliciting comments. Letters will be sent to the Executive President of the Carolinas AGC (prime contractors association); SC Commission on SC Minority Affairs (entity representing multiple minority interests); Chair of the SC Legislative Black Caucus; Hispanic Contractors Association of the Carolinas and Executive Director of the SC Women's Business Center.

SCDOT will consider any written comments it receives from the public in setting its final goal. After consideration has been given, SCDOT will issue its final goal statement and methodology. SCDOT believes that this procedure satisfies the public participation requirements set forth in 49 CFR §26.45(g)(1). Additionally, the department feels that its goal methodology is consistent with the requirements of 49 CFR §26.45.